Supreme Court, U.S.
FILED
JAN 24 2002
CLERK

(4)

No. 01-394

IN THE

Supreme Court of the United States

OCTOBER TERM, 2001

WARREN CHRISTOPHER, MARILYN MCAFEE, ALEXANDER WATSON, ANNE PATTERSON, PEG WILLINGHAM, ANTHONY LAKE, and RICHARD E. FEINBERG,

Petitioners,

v.

JENNIFER K. HARBURY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

---

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 1, 2001
CERTIORARI GRANTED DECEMBER 10, 2001

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U.S. District Court
USDC District of Columbia (Washington)
CIVIL DOCKET FOR CASE #: 96-CV-438

HARBURY V. DEUTCH, et al

Filed: 03/07/96
Assigned to: Judge Colleen Kollar-Kotelly
Jury demand: Both
Demand: $9,999,000
Nature of Suit: 890
Lead Docket: None
Jurisdiction: US Defendant
Dkt# in other court: None
Cause: 28:1331 Fed. Question: Civil Rights Violation

DOCKET PROCEEDINGS

DATE	#	DOCKET ENTRY
3/7/96	1	COMPLAINT filed by plaintiff JENNIFER K. HARBURY, jury demand (ted) [Entry date 03/08/96]
3/7/96	--	SUMMONS (30) issued to federal party(s) federal defendant JOHN M. DEUTCH, federal defendant R. JAMES WOOLSEY, federal defendant ROBERT M. GATES, federal defendant DAVID – COHEN, federal defendant JACK DEVINE, federal defendant HUGH E. PRICE, federal defendant THOMAS A. TWEETEN, federal defendant JOHN GANNON, federal defendant DOUGLAS J. MACEACHIN, federal defendant JOHN L. HELGERSON, federal defendant TERRY WARD, federal defendant BRIAN LATELLE,

federal defendant RICHARD – COOPER, federal defendant CHRISTINE WILLIAMS, federal defendant JOSEPH S. NYE, federal defendant FRITZ ESMARTH, federal defendant DAN DONAHUE, federal defendant FREDERIC BRUGGER, federal defendant CIA, federal defendant WARREN CHRISTOPHER, federal defendant MARILYN MACAFEE, federal defendant ALEXANDER WATSON, federal defendant ANNE PATTERSON, federal defendant ANTHONY LAKE, federal defendant RICHARD FEINBERG, federal defendant NATL. SEC. COUNCIL, and non-parties: U.S. Attorney and U.S. Attorney General. (ted) [Entry date 03/08/96]

5/31/96 -- SUMMONS (25) issued to, and non-parties: U.S. Attorney and U.S. Attorney General. (jmf)

8/9/96 44 MOTION filed by federal defendant to dismiss complaint [1-1] (lkn) [Entry date 08/12/96]

8/30/96 51 MOTION filed by federal defendant ANTHONY LAKE, federal defendant RICHARD FEINBERG to dismiss complaint [1-1] (bjl) [Entry date 09/03/96]

8/30/96 55 MOTION filed by plaintiff JENNIFER K. HARBURY to create a viable alternative for service (lkn) [Entry date 03/03/96]

9/11/96 57 RESPONSE by federal defendant JOHN M. DEUTCH, federal defendant R. JAMES WOOLSEY, federal defendant ROBERT M. GATES, federal defendant DAVID COHEN,

federal defendant JACK DEVINE, federal defendant HUGH E. PRICE, federal defendant THOMAS A. TWEETEN, federal defendant JOHN GANNON, federal defendant DOUGLAS J. MACEACHIN, federal defendant JOHN L. HELGERSON, federal defendant TERRY WARD, federal defendant BRIAN LATELLE, federal defendant RICHARD COOPER, federal defendant CHRISTINE WILLIAMS, federal defendant JOSEPH S. NYE, federal defendant FRITZ ESMARTH, federal defendant DAN DONAHUE, federal defendant FREDERIC BRUGGER, federal defendant CIA, federal defendant WARREN CHRISTOPHER, federal defendant MARILYN MACAFEE, federal defendant ALEXANDER WATSON, federal defendant ANNE PATTERSON, federal defendant PEG WILLINGAM, federal defendant DOS, federal defendant ANTHONY LAKE, federal defendant RICHARD FEINBERG, federal defendant NATL. SEC. COUNCIL in opposition to motion to create a viable alternative for service [55-1] by JENNIFER K. HARBURY, and (second) motion to extend time within which defendants may be served in their individual capacities by forty-five (45) days [54-1] by JENNIFER K. HARBURY. (lkn) [Entry date 09/12/96]

9/13/96 58 ORDER by Judge Norma H. Johnson: granting motion to extend time within which defendants may be served in their individual capacities by forty-five (45) days [54-1] by JENNIFER K. HARBURY, plaintiff be, and hereby is, warned that that there shall be no further extensions of

time of service of the complaint, plaintiff shall file an amended complaint no later than 9/30/96; dispositive motions due by 11/15/96; response to dispositive motions due by 12/16/96; reply to dispositive motions due by 1/13/97; motion hearing on defendants' dispositive motions to be filed on 11/16/96 shall be set for 2:00 2/24/97; resolution of defendants' motion to dismiss complaint [1-1] [51-1] filed on 8/30/96 be and hereby is, stayed pending resolution of defendant's dispositive motion to be filed on 11/15/96. (N) (adc) [Entry date 09/16/96]

9/13/96 -- MEET AND CONFER STATUS HEARING held before Judge Norma H. Johnson: Current motion to dismiss can be withdrawn. Amended complaint is to be filed by 9/30/96. Motion to dismiss is to be filed by 11/15/96. Plaintiff's response to motion to dismiss due 12/16/96. Defendant's reply due 1/13/97. Motion hearing on defendant's motion to dismiss is set for 2/24/96 at 2:00 p.m. Oral request by plaintiff for 45 days in which to respond to motion to dismiss; heard and denied. Motion by plaintiff to extend time in which to serve defendants; heard and granted. Reporter: Gordon Slodysko (adc) [Entry date 09/17/96]

9/30/96 72 AMENDED COMPLAINT by plaintiff JENNIFER K. HARBURY amending complaint [1-1]; jury demand (lkn) [Entry date 10/01/96]

11/22/96 78 MOTION filed by federal defendant to dismiss amended complaint [72-1] (lkn) [Entry date 11/25/96]

12/23/9679 MOTION filed by plaintiff JENNIFER K. HARBURY for leave to file a brief in opposition to the defendants' motion to dismiss plaintiff's amended complaint in excess of the page limit: EXHIBIT (Memorandum in opposition). (lkn) [Entry date 12/24/96]

1/23/97 82 REPLY by federal defendant to plaintiff's opposition to motion to dismiss amended complaint [72-1] [78-1] by federal defendants (lkn) [Entry date 01/23/97]

3/10/97 83 ORDER by Judge Norma H. Johnson: denying motion to create a viable alternative for services [55-1] by JENNIFER K. HARBURY, denying motion to dismiss complaint [1-1] [44-1] by federal defendants (N) (adc) [Entry date 03/11/97]

4/4/97 84 MOTION OF FILING by federal defendants informing the Court that they will rely on additional authority. Simpkins v. District of Columbia, No 94-5243 at the hearing of 4/7/97; attachment (dam [Entry date 04/07/97]

4/7/97 -- STATUS HEARING before Judge Norma H. Johnson: motion hearing set for 4:00 4/23/97 Reporter: Gordon Slodysko (adc) [Entry date 04/10/97]

4/17/97 86 MEMORANDUM by plaintiff JENNIFER K. HARBURY filing additional authority; attachment (dam) [Entry date 04/18/97]

4/28/97 -- REASSESSMENT OF CIVIL CASE from Judge Norma Holloway Johnson to Judge

Colleen Kollar-Kotelly by direction of the Calendar Committee. Emergency matters will continue to be handled by Judge Johnson until Judge Kollar-Kotelly takes the oath of office. (N) (mlp) [Entry date 4/30/97]

3/30/98 88 MOTION filed by plaintiff JENNIFER K. HARBURY for leave to file second amended complaint; EXHIBIT (second amended complaint) (tlh) [Entry date 03/31/98]

4/10/98 89 RESPONSE by federal defendant in opposition to motion for leave to file second amended complaint [88-1] by JENNIFER K. HARBURY. (tlh) [Entry date 04/13/98]

7/20/98 90 ORDER by Judge Colleen Kollar-Kotelly: that by 8/3/98 plaintiff shall put forward specific nonconclusory factual allegations that establish improper motive animating the defendants' putative conspiracy with members of the Guatemalan military; no later than 8/17/98 defendants may file a supplemental brief in support of motion to dismiss the amended complaint; by 8/31/98 plaintiff may file a brief that responds to the defendants supplemental brief; the motions hearing scheduled for 8/3/98 shall be vacated (N) (adc)

8/3/98 91 FURTHER SUBMISSION OF FACTUAL ALLEGATIONS by plaintiff JENNIFER K. HARBURY; Exhibits (34). (lkn) [Entry date 08/04/98]

8/17/98 94 SUPPLEMENTAL by federal defendant in support of motion to dismiss amended complaint (tlh) [Entry date 08/18/98]

8/31/98 95 SUPPLEMENTAL BRIEF by plaintiff JENNIFER K. HARBURY in opposition to motion to dismiss amended complaint [72-1] [78-1] by federal defendants (tlh) [Entry date 09/01/98]

12/3/98 -- MOTION HEARING before Judge Colleen Kollar-Kotelly taken under advisement by federal defendant motion to dismiss amended complaint [72-1] [78-1] Reporter: Edward Hawkins (adc) [Entry date 12/04/98]

3/23/99 96 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dot)

3/23/99 97 ORDER by Judge Colleen Kollar-Kotelly: granting in part, denying in part motion to dismiss amended complaint [72-1] [78-1]; that Counts 1-17 of the Seconded Amended Complaint shall be, and hereby are, dismissed with prejudice; that in all other respects, the defendants' motion to dismiss is denied; that by 4/5/99, the plaintiff shall file a more definite statement identifying the specific norms and provisions of international law on which she predicates the international-law claim in her Second Amended Complaint. (N) (dot)

4/19/99 101 RESPONSE RE: a more definite statement by plaintiff JENNIFER K. HARBURY to order [97-1] (tb) [Entry date 04/20/99]

7/20/99 103 MOTION filed by federal defendant for entry of final judgment (tb) [Entry date 07/21/99]

7/21/99 -- MEET AND CONFER STATUS HEARING before Judge Colleen Kollar-Kotelly: Status hearing set for 9:30 11/29/99. Motions due by 9/7/99. Response to motion due by 10/1/99. Reply to motion due by 10/15/99. Case assigned to the Complex track (track three). Reporter: Edward Hawkins (tb) [Entry date 07/22/99]

7/22/99 104 ORDER by Judge Colleen Kollar-Kotelly: dispositive motions due 9/7/99; response to dispositive motions due 10/1/99; reply to dispositive motions due 10/15/99; status hearing set for 9:30 11/29/99; response to motion for certification due 7/26/99; reply to motion due 7/30/99 (N) (adc)

7/26/99 105 RESPONSE by plaintiff JENNIFER K. HARBURY in opposition to motion for entry of final judgment [103-1] by federal defendants. (tb) [Entry date 07/27/99]

7/30/99 106 REPLY by federal defendants to plaintiff's opposition to motion for entry of final judgment [103-1] (jf) [Entry date 08/01/99]

8/4/99 107 MOTION filed by plaintiff JENNIFER K. HARBURY for leave to file third amended complaint; EXHIBIT (THIRD AMENDED COMPLAINT) (tb) [Entry date 08/05/99]

8/9/99 108 FINAL JUDGMENT by Judge Colleen Kollar-Kotelly in favor of the individual federal

defendants against plaintiff JENNIFER K. HARBURY (dam)

8/23/99 111 RESPONSE by federal defendant in opposition to motion for leave to file third amended complaint [107-1] by JENNIFER K. HARBURY. (lkn) [Entry date 08/24/99]

9/7/99 113 TRANSCRIPT filed for date(s) of December 03, 1998. Reporter: Edward N. Hawkins (jf) [Entry date 09/08/99]

9/7/99 116 NOTICE OF APPEAL by plaintiff JENNIFER K. HARBURY from order [114-1], entered on: September 10, 1999. $5.00 filing fee and $100.00 docketing fee paid. Copies mailed to Maureen F. Del Duca, Jodie L. Kelley, Robert C. Lawrence, Kimberly N. Tarver. (N) (jf) [Entry date 09/13/99]

9/10/99 115 MOTION filed by federal defendants to dismiss amended complaint [72-1] (tb) [Entry date 09/13/99]

9/13/99 -- TRANSMITTED PRELIMINARY RECORD on appeal [116-1] by JENNIFER K. HARBURY to U.S. Court of Appeals (jf)

9/15/99 -- USCA #99-5307 assigned for appeal [116-1] by JENNIFER K. HARBURY (tb) [Entry date 09/16/99]

10/14/99 117 RESPONSE by plaintiff JENNIFER K. HARBURY in opposition to motion to dismiss amended complaint [72-1] [115-1] by federal defendants. (tb) [Entry date 10/15/99]

11/8/99 122 REPLY by federal defendants to motion to dismiss amended complaint [72-1] [115-1] by federal defendants (tb) [Entry date 11/09/99]

2/9/00 123 ORDER by Judge Colleen Kollar-Kotelly: denying motion for leave to file third amended complaint [107-1] by JENNIFER K. HARBURY (N) (adc) [Entry date 02/11/00]

3/9/00 124 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dot)

3/9/00 125 ORDER by Judge Colleen Kollar-Kotelly: granting in part, denying in part motion to dismiss amended complaint [72-1] [115-1], granting as to Counts 23-27, and denying as to Counts 18-22; plaintiff and defendants shall, no later than 3/24/00 at 5:00 p.m., file, fax or hand-deliver to opposing counsel, and hand-deliver directly to Chambers 4323, supplemental briefs addressing the following issue: Whether Plaintiff's international law claims against the Defendants present a nonjusticiable political question; that, no later than 3/31/00 at 5:00 p.m., the parties shall file, fax or hand-deliver to opposing counsel, and hand-deliver directly to Chambers 4323, response to the supplemental briefs. (N) (dot)

4/3/00 129 SUPPLEMENT BRIEF by plaintiff JENNIFER K. HARBURY to plaintiff's preliminary statement (bjsp) [Entry date 04/04/00]

4/3/00 130 MOTION (SUPPLEMENTAL) filed by federal defendants to dismiss amended complaint [72-1]; attachment (bjsp) [Entry date 04/04/00]

4/11/00 134 RESPONSE by federal defendant to supplemental memorandum [129-1] by JENNIFER K. HARBURY (jf) [Entry date 04/12/00]

4/13/00 145 RESPONSE by plaintiff JENNIFER K. HARBURY to motion to dismiss amended complaint [72-1] [130-1] by federal defendants (bjsp) [Entry date 09/20/00]

5/12/00 137 RESPONSE by plaintiff JENNIFER K. HARBURY in opposition to motion to dismiss amended complaint [72-1] [130-1] by federal defendants. (tb) [Entry date 05/15/00]

6/5/00 142 REPLY by federal defendant to plaintiff's opposition to motion to dismiss amended complaint [72-1] [130-1] by federal defendants. (dam) [Entry date 06/06/00]

6/27/00 -- STATUS HEARING before Judge Colleen Kollar-Kotelly: parties to submit a schedule to the Court by 6/30/00; Reporter: Edward Hawkins (dot) [Edit date 04/10/01]

11/6/00 146 MOTION filed by plaintiff JENNIFER K. HARBURY for order to compel defendants to respond to discovery; exhibits (8) (cdw) [Entry date 11/07/00]

12/8/00 149 RESPONSE by federal defendant in opposition to motion for order to compel defendants to

respond to discovery [146-1] by JENNIFER K. HARBURY; declaration (1), exhibit (1) (tb) [Entry date 12/13/00]

12/28/00 150 REPLY by plaintiff JENNIFER K. HARBURY in support of motion for order to compel defendants to respond to discovery [146-1] by JENNIFER K. HARBURY (hsj) [Entry date 12/29/00] [Edit date 01/03/01]

3/13/01 151 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dam)

3/13/01 152 ORDER by Judge Colleen Kollar-Kotelly: denying motion to dismiss amended complaint [72-1] [130-1] by federal defendants, without prejudice. (N) (dam)

4/5/01 153 CERTIFIED COPY of docket sheet filed in USCA dated 12/12/00, on appeal [116-1], affirming the judgment of USDC. USCA #99-5307 (cjp) [Entry date 04/09/01]

5/22/01 154 ORDER by Judge Colleen Kollar-Kotelly: that defendants shall file supplemental briefing which addresses the issues referenced in the above paragraphs no later than 6/6/01. Plaintiff shall file her response to defendants' supplemental brief no later than 6/18/01. (N) (dot)

5/25/01 155 ORDER by Judge Colleen Kollar-Kotelly: that the classified declaration shall be identified on the docket sheet as an ex parte, sealed document filed by defendants on 5/21/01. The classified declaration shall be maintained under

seal, with access strictly limited to the Court and counsel for defendants. (N) (dot)

6/6/01 156 SUPPLEMENTAL MEMORANDUM by federal defendants in support of its opposition to plaintiff's motion to compel discovery [149-1] by federal defendants; attachment (1) (bm) [Entry date 06/07/01]

6/8/01 157 NOTICE OF FILING by federal defendants; declaration of William H. McNair (bm) [Entry date 06/11/01]

7/6/01 160 SUPPLEMENTAL MEMORANDUM by plaintiff JENNIFER K. HARBURY in support of motion for order to compel defendants to respond to discovery [146-1] by JENNIFER K. HARBURY; exhibits (3) (cdw) [Entry date 07/10/01]

8/28/01 161 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dot)

8/28/01 162 ORDER by Judge Colleen Kollar-Kotelly: denying motion for order to compel defendants to respond to discovery [146-1] by JENNIFER K. HARBURY. That on or before 9/14/01, the parties shall file a joint status report with the Court setting forth the proposed future course of the litigation, including a proposed briefing schedule for any motions which may be appropriate at this time; thereafter, the Court shall set a status date. (N) (dot)

9/17/01 164 STATUS REPORT (JOINT) by plaintiff, federal defendants (cdw) [Entry date 09/18/01]

10/2/01 166 ORDER by Judge Colleen Kollar-Kotelly: plaintiff shall serve any discovery upon the IOB not later than 10/8/01. The government shall respond to the discovery request not later than 11/9/01. If appropriate, plaintiff shall file a motion to compel, motion due 12/10/01; response to motion due 1/7/02; reply motion due 1/28/02. (N) (dot)

GENERAL DOCKET
US COURT OF APPEALS FOR THE DC CIRCUIT
D.C. Circuit Court of Appeals

Court of Appeals Docket #: 99-5307 Filed 9/15/99
Nsuit: 2890 Other Statutory Actions
Harbury, Jennifer K. v. Deutch, John M., et al
Appeal from: U.S. District Court

9/15/99 CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Jennifer K. Harbury. [463641-1] (sha)

9/17/99 CLERK'S ORDER filed directing Appellant to file [464233-1]: docketing statement; certificate of counsel; statement of issues; lower court decision; any procedural motions; transcript status notice; deferred appendix notice; appearance form due 10/18/99; any dispositive motions due 11/1/99. Directing Appellees to file [464233-2] certificate of counsel; any procedural motions; appearance form due 10/18/99; any dispositive motions due 11/1/99. [Entry Date: 9/17/99] (sha)

10/18/99 ENTRY OF APPEARANCE filed by Attorneys Jennifer M. Green, Beth Stephens, Jodie Lyn Kelley and Maureen Frances Del Duca for Appellant Jennifer K. Harbury [470582-1]. (jth)

10/18/99 INITIAL SUBMISSIONS filed by Appellant Jennifer K. Harbury [470588-1]: docketing statement; certificate of counsel; statement of issues; lower court decision; deferred appendix notice (Deferred Appendix needed = n). (jth)

10/18/99 NOTICE filed by Appellant Jennifer K. Harbury FINAL transcript status notice [470590-1]. Transcripts of the 12/3/98 hearing were received and filed in USDC on 9/7/99. Certificate of service date 10/18/99. (jth)

10/28/99 ENTRY OFAPPEARANCE filed by Attorneys R. Craig Lawrence and Wilma Antoinette Lewis for Appellees' John M. Deutch, et al. (Taken from the Certificate of Counsel and Motion for Leave to Late File submitted this date). [473325-1]. (jth)

11/15/99 MOTION filed (5 copies) by Appellees' John M. Deutch, et al., (certificate of service dated 11/15/99) for summary affirmance [477166-1]. Response due by 11/29/99. (jth)

11/18/99 CORRECTED MOTION filed by Appellees John M. Deutch, et al., (certificate of mail service dated 11/18/99) for summary affirmance [478111-1]. Response due 12/1/99. (jth)

12/1/99 OPPOSITION filed [480962-1] (5 copies) by Appellant Jennifer K. Harbury (certificate of service dated 12/1/99) to a motion for summary affirmance [478111-1]. (sha)

12/13/99 REPLY filed [483615-1] (5 copies) by Appellees John M. Deutch, et al. (certificate of service dated 12/13/99) to a response to the motion for summary affirmance [478111-1]. (sha)

2/8/00 PER CURIAM ORDER filed that the motion for summary affirmance be denied. The merits of the parties' positions are not so clear as to warrant summary action [478111-1]. Because the court has determined that summary disposition is not in order, the clerk is instructed to calendar this case for presentation to a merits panel. Before Judges Ginsburg, Sentelle, (No 3rd Judge). [Entry Date: 2/8/00] (wmw)

2/16/00 CLERK'S ORDER filed to schedule oral argument [496830-1] before Judge Initials: HTE DHG DST on 9/8/00 at 9:30 AM; Establishing the initial briefing schedule [496830-2]: Appellant's brief due on 5/17/00; Appellant's appendix due on 5/17/00; Appellees' brief due on 6/16/00; Appellant's reply brief due on 6/30/00. [Entry Date: 2/16/00] (cwc)

5/17/00 BRIEF filed by Appellant Jennifer K. Harbury [517926-1]. Copies: 16. Certificate of service date 5/17/00. (sha)

5/17/00 APPENDIX filed by Appellant Jennifer K. Harbury [517927-1]. Copies: 10. Certificate of service date 5/17/00. (sha)

6/16/00 BRIEF filed by Appellees John M. Deutch [524403-1]. Copies: 15. Certificate of service date 6/16/00. (sha)

6/30/00 REPLY BRIEF filed by Appellant Jennifer K. Harbury [527507-1]. Copies: 15. (Certificate of mail service date 6/30/00). (jth)

8/17/00	PER CURIAM ORDER filed to allocate oral argument times: APET minutes – 10 ERES minutes – 10. [537027-1], one counsel per side to argue. [537027-2] Oral argument scheduled for 9/8/00, Form 72 notice of attorney arguing case – [537027-3] due 8/25/00. [Entry Date: 8/17/00] (cwc)
9/8/00	ORAL ARGUMENT HELD before Edwards, Ginsburg, Tatel. (cco)
12/12/00	JUDGMENT for the reasons in the accompanying opinion affirming [562065-1] in part and reversing [562065-2] and remanding in part to the district court [562065-3]. Before Judges Edwards, Ginsburg, Tatel. [Entry Date 12/12/00] (mam)
12/12/00	OPINION (26 pgs) for the Court filed by Judge Tatel (mam)

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JENNIFER K. HARBURY, on her own behalf and as administratrix of the Estate of Efrain Bamaca-Velasquez,	)	Civil Action No. 96-0438 CMK
1010 Vermont Ave. N.W. Washington, D.C. 20005,	)	
Plaintiff,	)	SECOND AMENDED
v.	)	COMPLAINT FOR
JOHN M. DEUTCH, Director, Central Intelligence Agency ("CIA"); R. JAMES WOOLSEY, Director, CIA; ROBERT M. GATES, Director CIA; DAVID COHEN, Deputy Director for Operations, CIA; JOHN J. DEVINE, Deputy Director for Operations, CIA; THOMAS A. TWETTEN, Deputy Director for Operations, CIA; JOHN C. GANNON, Deputy Director for Intelligence, CIA; DOUGLAS J. MACEACHIN, Deputy Director for Intelligence, CIA; JOHN L. HELGERSON, Deputy Director for Intelligence, CIA; TERRY R. WARD, Chief, Latin America Division, CIA; BRIAN LATELLE National Intelligence Officer, Western Hemisphere, CIA;	)	DAMAGES AND INJUNCTIVE AND DECLARATORY RELIEF FOR VIOLATIONS OF THE FIRST, FIFTH AND NINTH AMENDMENTS TO THE U.S. CONSTITUTION; TORTS IN VIOLATION OF THE LAWS OF THE DISTRICT OF COLUMBIA AND THE COMMON-WEALTH OF VIRGINIA JURY TRIAL DEMANDED

RICHARD N. COOPER, Chief, National Intelligence Council, CIA; CHRISTINE N. WILLIAMS, Chief, National Intelligence Council, CIA, JOSEPH S. NYE, Chief, National Intelligence Council, CIA; FRITZ W. ESMARTH, Chief, National Intelligence Council, CIA; DAN DONAHUE, Guatemala Station Chief, CIA; FREDERICK A. BRUGGER, Guatemala Station Chief, CIA; UNNAMED EMPLOYEES OF THE CIA; each sued in his or her official and individual capacities; and the CENTRAL INTELLIGENCE AGENCY;

Central Intelligence Agency
Langley, Virginia

WARREN CHRISTOPHER, Secretary of State; MARILYN MACAFEE, U.S. Ambassador to Guatemala; ALEXANDER WATSON, Assistant Secretary of State for InterAmerican Affairs; ANNE PATTERSON; Deputy Assistant Secretary of State for InterAmerican Affairs, PEG WILLINGHAM, Guatemala Desk Officer, Department of State; UNNAMED EMPLOYEES OF THE U.S. DEPARTMENT OF STATE; each sued in his or her

official and individual capacities; the U.S. DEPARTMENT OF STATE;

Department of State
2201 C Street
Washington, D.C. 20520;

and

ANTHONY LAKE, National Security Advisor; RICHARD E. FEINBERG, staff member, National Security Council; UNNAMED EMPLOYEE OF THE NATIONAL SECURITY COUNCIL; each sued in his or her official and individual capacities; and the NATIONAL SECURITY COUNCIL;

National Security Council
The White House
1600 Pennsylvania Ave, NW
Washington, D.C. 20500;

Defendants.

SECOND AMENDED COMPLAINT FOR DAMAGES AND FOR INJUNCTIVE AND DECLARATORY RELIEF

Nature of the Case

1. This is a case about agents and officials of the United States who detained, tortured, and summarily

executed Efrain Bamaca-Velasquez, the husband of Plaintiff Jennifer Harbury and a member of the Guatemalan resistance movement, who then covering up the detention and torture while it occurred, and who continued to cover up the detention, torture and execution after Mr. Bamaca's death.

2. Many of the agents involved in the detention, torture and execution of Mr. Bamaca are also members of the Guatemalan military, trained in the use of torture and similar tactics by the United States government at its infamous "School of the Americas."

3. The agents and officials involved in directing these events, or in the ongoing cover-up of these events, include officials, employees and agents of the United States Central Intelligence Agency ("CIA"), the United States Department of State, and the National Security Council.

4. Plaintiff Jennifer K. Harbury brings this action for damages and equitable relief against agencies, officials, employees and agents of the United States government who directed, collaborated in, and participated in the abduction, secret detention, brutal torture, and extrajudicial execution of her husband, Efrain Bamaca-Velasquez; intentionally deceived Plaintiff as to her husband's true circumstances; and covered up their involvement therein.

5. Defendants' actions violated the First, Fifth and Ninth Amendments to the United States Constitution, norms of international law, and the laws of the District of Columbia and the Commonwealth of Virginia.

6. The constitutional and tort claims asserted herein fall into two broad categories. The first includes claims based on the direction of and participation in the secret detention, torture, and assassination of Mr. Bamaca by officials, employees and agents of the United States Central Intelligence Agency, the United States Department of State, and the National Security Council and on the adoption by such defendants of policies and practices that caused and encouraged said deception, torture, and assassination. The

second includes claims based on Defendants' intentional deception of Plaintiff as to her husband's true situation.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over the claims in this case pursuant to 28 U.S.C. §§ 1331, 1346, and 1350.

8. The U.S. District Court for the District of Columbia is the proper venue for this action pursuant to 28 U.S.C. § 1391.

The Parties

Plaintiff

9. Plaintiff Jennifer Kristina Harbury is a United States citizen, 44 years of age, and a resident of the District of Columbia. She is the widow of Efrain Bamaca-Velasquez.

The CIA Defendants

10. Defendant John M. Deutch is Director of the Central Intelligence Agency ("CIA"). He is sued in his official and individual capacities.

11. Defendant R. James Woolsey was Director of the CIA from 1993-1995. He is sued in his official and individual capacities.

12. Defendant Robert Gates was Director of the CIA from 1991-1993. He is sued in his official and individual capacities.

13. Defendants David Cohen, Jack DeVine, Hugh E. Price and Thomas Twetten were Deputy Directors for Operations of the CIA during times relevant to this Complaint. Each is sued in his official and individual capacities.

14. Defendants John Gannon, Douglas J. MacEachin and John L. Helgerson were Deputy Directors for Intelligence of the CIA during times relevant to this Complaint. Each is sued in his official and individual capacities.

15. Defendant Terry Ward was chief of the CIA's Latin America division during times relevant to the Complaint. He is sued in his official and individual capacities.

16. Defendant Brian Latelle was National Intelligence Officer for the Western Hemisphere of the CIA during times relevant to the Complaint. He is sued in his official and individual capacities.

17. Defendants Richard Cooper, Christine Williams, Joseph S. Nye and Fritz Esmarth were chiefs of the National Intelligence Council of the CIA during times relevant to this Complaint. Each is sued in his or her official and individual capacities.

18. Defendant Dan Donahue was the CIA station chief in Guatemala from 1991-1993. he is sued in his official and individual capacities.

19. Defendant Frederick Brugger was the CIA station chief in Guatemala from 1991-1993. He is sued in his official and individual capacities.

20. The unknown persons named as CIA Defendants are CIA employees who worked in Guatemala from March 1992 through March 1996, bore responsibility for the CIA's actions towards Mr. Bamaca or the Plaintiff, or were personally involved in the violation of their rights. Each is sued in his or her official and individual capacities.

21. The CIA is an agency of the United States government, responsible for collecting, correlating and disseminating national intelligence information.

<u>The Department of State Defendants</u>

22. Defendant Warren Christopher is Secretary of State. He is sued in his official and individual capacities.

23. Defendant Marilyn MacAffee was the U.S. Ambassador to Guatemala during all times relevant to this complaint. She is sued in her official and individual capacities.

24. Alexander Watson is Assistant Secretary for InterAmerican Affairs of the U.S. Department of State. He is sued in his official and individual capacities.

25. Defendant Anne Patterson was the Deputy Assistant Secretary of InterAmerican Affairs of the U.S. Department of State during times relevant to this Complaint. She is sued in her official and individual capacities.

25A. Defendant John R. Hamilton was the Deputy Assistant Secretary for InterAmerican Affairs (Caribbean and Central America) during times relevant to this Complaint. He is sued in his official and individual capacities.

26. Defendant Peg Willingham was the Guatemala Desk Officer for the Department of States during times relevant to this Complaint. She is sued in her official and individual capacities.

27. The unknown persons named as Department of State Defendants are Department of State employees who bore responsibility for the Department of State's actions towards Mr. Bamaca or Ms. Harbury or were personally involved in the violation of their rights. Each is sued in his or her official and individual capacities.

28. The Department of State is an agency of the United States, responsible for the management of foreign affairs.

The National Security Council Defendants

29. Anthony Lake is President Clinton's National Security Advisor and head of the National Security Council. He is sued in his official and individual capacities.

30. Richard Feinberg is a staff member of the National Security Council. He is sued in his official and individual capacities.

31. The unknown persons named as National Security Council Defendants are employees of that agency who bore responsibility for the agency's actions towards Mr. Bamaca or Ms. Harbury or were personally involved in the violation of their rights. Each is sued in his or her official and individual capacities.

32. The National Security Council is an independent agency within the Executive Office of the President of the United States, responsible for advising the President with respect to national security policies.

Statement of Facts

33. Plaintiff Jennifer K. Harbury is the widow of Efrain Bamaca-Velasquez, a Mayan citizen of Guatemala who was long involved in the thirty-five year civil war in that country. Mr. Bamaca, a high-ranking commander of the Guatemalan National Revolutionary Union ("U.R.N.G.") resistance forces, also was known as Commander Everardo.

A. The Defendants' Direction of, and Participation in, the Secret Imprisonment, Torture and Extrajudicial Execution of Efrain Bamaca Velasquez

34. On or about March 12, 1992 Mr. Bamaca vanished in Guatemala. The Guatemalan army publicly claimed that he had committed suicide during an army

skirmish with U.R.N.G. forces and that it had buried his body in the nearby town of Retalhuleu.

35. On March 18, 1992, the CIA reported to the White House and the Department of State, as well as other U.S. agencies, that Commander Everardo had in fact been captured alive by Guatemalan military forces and that they would probably fabricate his combat death in order to be able to maximize their ability to extract information from Mr. Bamaca.

36. On information and belief, after his capture on March 18, 1992, Mr. Bamaca was secretly detained, psychologically abused and physically tortured by CIA agents and the Guatemalan army for approximately one year, and eventually executed without trial.

37. On information and belief, CIA agents and the Guatemalan army routinely imprison anti-government activists in secret detention under severe psychological abuse and subject them to torture in order to extract information from them. On information and belief, these prisoners are routinely extrajudicially executed.

38. On information and belief, the Defendants were aware of the Guatemalan army's use of this open and notorious widespread practice.

39. On information and belief, the Defendants also assisted in the initiation and perpetuation of this open and notorious widespread practice by training Latin American military and police officers to engage in such practices at the School of the Americas, a United States government facility located in Georgia that was established in 1946.

40. On information and belief, Julio Roberto Alpirez, a Colonel in the Guatemalan army, Mr. Sosa-Orellana, a Major in the Guatemalan army, and other Guatemalan military officers responsible for the arrest, secret imprisonment, torture, and extrajudicial execution of Mr. Bamaca had previously been students at the School of the

Americas and had received additional United States military training.

41. On information and belief, many of the Guatemalan military officers involved in the arrest, secret detention, torture, and extrajudicial execution of Mr. Bamaca, including Mr. Alpirez Mr. Sosa, also were paid CIA agents.

42. On information and belief, these paid CIA agents, called "assets" by the CIA, relayed information to their superiors at the CIA about the condition, abuse and fate of Mr. Bamaca, who was considered to be a highly important prisoner both by the Defendants and by the Guatemalan military.

43. On information and belief, these paid CIA agents were hired by the CIA for the purpose of, among other things, obtaining information about the URNG. On information and belief it is understood by the CIA and/or intended by the CIA that this information would be obtained through torture and similar means.

44. On information and belief, such information was shared with the White House and the Department of State.

45. Despite full knowledge of this situation, none of the Defendants took any steps to stop this conduct; none directed their agents to stop this conduct; and none took any other measures to intervene to halt such unlawful abuse.

46. Instead, on information and belief, Defendants knowingly paid substantial sums to the CIA's Guatemalan agents or "assets" who secretly imprisoned, tortured and extrajudicially murdered Mr. Bamaca in order to obtain information from Mr. Bamaca that was sought by the CIA.

47. Indeed, on information and belief, the CIA paid Mr. Alpirez $44,000 in July, 1992, and Mr. Alpirez was observed engaging in the torture of Mr. Bamaca during this very same month.

48. On information and belief, Mr. Bamaca was executed without trial pursuant to the orders of Mr. Alpirez and/or other paid agents and/or employees of the CIA.

49. The defendants thus knowingly engaged in, directed, collaborated and conspired in, and otherwise contributed to the secret imprisonment, torture and extrajudicial murder of, Efrain Bamaca-Velasquez.

B. The Defendants' Deception of Jennifer Harbury as to her Husband's True Circumstances Prior to Her Husband's Extrajudicial Execution

50. In early 1993, Plaintiff was informed by an eyewitness that her husband had not died in combat, but was in fact alive and being subjected to torture by CIA agents and members of the Guatemalan army.

51. The eyewitness, Santiago Cabrera Lopez, informed Plaintiff that he possessed this information because he himself had been captured, secretly detained and tortured by members of the Guatemalan army and that, during this period, he had directly witnessed Mr. Bamaca – his own former commander – being physically and psychologically tortured and/or abused on several occasions.

52. At that time, Mr. Lopez also told Plaintiff that the sessions he had observed included a July, 1992 session in which Mr. Alpirez personally engaged in the torture of Mr. Bamaca.

53. At that time, Mr. Lopez also provided Plaintiff with the names of approximately forty other people who were being secretly detained by CIA agents and members of the Guatemalan military.

54. Mr. Lopez transmitted this information to the Plaintiff orally and through a written statement.

55. In March, 1993, Plaintiff contacted several Department of State officials, told them of her concerns, asked them if they had any information about her husband's status, and provided them with Mr. Lopez's statement. The Department of State officials promised to look into the matter and to assist her.

56. On information and belief, Defendants were aware before Mr. Bamaca's capture that URNG members were being imprisoned by CIA agents and/or other members of the Guatemalan military. On information and belief, reports written at least as early as May, 1993 and distributed to CIA, Department of State, White House and National Security Counsel officials indicated that three Guatemalan military officers had confirmed that as many as 340-360 former U.R.N.G. members were being imprisoned by CIA agents and/or other members of the Guatemalan military, and at least one of these reports affirmatively stated that Mr. Bamaca was still alive.

57. On information and belief, other substantial evidence and documentation concerning the fate of Mr. Bamaca was possessed by and/or readily available and accessible to all Defendants both before and after this time.

58. None of this information, however, was relayed to Plaintiff.

59. Despite the availability of this information, Department of State letters publicly distributed throughout 1993 and 1994 repeatedly stated that no independent information existed as to the secret detention of Guatemalan citizens, and that the Department of State was highly concerned about Mr. Bamaca's status.

60. In August 1993, Plaintiff received permission to open the Retalhuleu grave where the Guatemalan army had claimed to have buried Bamaca, and discovered that it did not contain the remains of her husband but instead contained the body of a young man who was far smaller and younger than her husband, and who had completely different dental patterns.

61. Plaintiff immediately reported this information to defendant Marilyn MacAffee, then the United States Ambassador to Guatemala.

62. Defendant MacAffee asked that the information be submitted in writing and stated that she would investigate

the matter immediately and report her findings to the Plaintiff. Defendant MacAffee also assured Plaintiff that she would be properly informed regarding her husband's situation.

63. Plaintiff submitted the requested information within a week.

64. In September 1993, because neither Defendant MacAffee nor any other official of the United States government had provided her with any relevant information, Plaintiff engaged in a highly dangerous week-long hunger strike in front of the Politecnica, a military center located in Guatemala City, in protest of her husband's situation, and to insist that he be presented to the courts and given a fair trial, and that his rights under the Geneva Convention be protected.

65. State Department Defendants were fully aware of Plaintiff's hunger strike and communicated with her regularly before, during and after the hunger strike.

66. On information and belief, the Defense Intelligence Agency ("DIA") reported in September, 1993 to the White House, the Secretary of State, and the United States Embassy in Guatemala that stated that Mr. Bamaca had been captured alive, interrogated, and executed.

67. On information and belief, prior to Mr. Bamaca's extrajudicial execution Defendants intentionally misled Plaintiff, through their deceptive statements and omissions, into believing that concrete information about her husband's fate did not exist because they did not want to threaten their ability to obtain information from Mr. Bamaca through his detention and torture. On information and belief, Defendants feared that any such ability would be threatened if Plaintiff or anyone else learned of Mr. Bamaca's detention and torture.

68. On information and belief, Defendants also intentionally misled Plaintiff, through their deceptive statements and omissions, into believing that concrete information about her husband's death did not exist because they did not want their role or the role of any U.S. official,

employee or agent in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. On information and belief, Defendants feared that such information would be revealed if they disclosed to Plaintiff or to anyone else that they had information regarding Mr. Bamaca's fate, and they could then be subject to public embarrassment, censure, and/or legal liability.

69. Internal memoranda distributed by and/or received by defendants during the relevant time period demonstrates the defendants intent to keep the involvement of the U.S. Government in the detention, torture, and execution of Mr. Bamaca out of the public eye.

C. The Defendants' Deception of Jennifer Harbury as to her Husband's True Circumstances After Her Husband's Extrajudicial Execution

70. From October, 1993 to October, 1994, Plaintiff met repeatedly with the Department of State Defendants to seek information as to the fate of her husband.

71. During this time period, the Department of State Defendants repeatedly informed Plaintiff that they were highly concerned about her husband's situation, were looking seriously into the matter, and had made repeated inquires to the Guatemalan army on the matter but had been told that the military did not have Mr. Bamaca, and had never had him.

72. At no time was Plaintiff informed by any of the Defendants or by anyone else that any reports as to the fate of her husband existed, nor was she advised of the underlying contents of such reports.

73. Nor was Plaintiff informed that CIA agents and military sources had confirmed to the United States government that they were, in fact, secretly detaining numerous Guatemalan citizens and torturing and extrajudicially executing them. To the contrary, form letters

distributed by the Department of State indicated that there was no independent evidence of any such practices.

74. Numerous human rights activists and Congressional staffers also made inquires on Plaintiff's behalf. None of them was advised of the existence of any such information or documents, nor of their underlying contents.

75. Based on the overall context, together with the intentional deceptive statements and omissions made by the Defendants, their demeanor, their actions, and their communications to others, Plaintiff understood, as would any reasonable person, that no such concrete information existed as to her husband's fate and that Defendants were making all possible efforts to determine his fate.

76. Defendants were aware of Plaintiff's understanding, intentionally created such understanding through their deceptive statements and omissions, and intended for her to continue with such understanding and to rely on that belief to cease her inquires into the matter.

77. Defendants at no time informed Plaintiff that they were unwilling to investigate her case or to give her information about her husband's situation. Instead, a decision was made to neither share the information with her, nor inform her of the existence of such information.

78. As a direct result of Defendants' intentionally deceptive statements and omissions, Plaintiff engaged in a highly publicized 32-day hunger strike in front of the National Palace in Guatemala City in a desperate effort to save her husband's life. The hunger strike lasted for the entire month of October 1994.

79. Plaintiff engaged in her hunger strike on the assumption that her husband might still be alive, and in the hope that her strike would induce his captors to free him. Plaintiff would not have commenced, or continued her hunger strike, had she been credibly informed that her husband was dead, a fact Plaintiff communicated to State Department officials.

80. The State Department Defendants were fully aware of Plaintiff's hunger strike, and were in direct and indirect personal communication with her before, during and after the hunger strike.

81. After nearly thirty days on this hunger strike, Plaintiff was informed by Mike Wallace, a reporter who appears on the "60 Minutes" television program, that the United States Embassy in Guatemala in fact possessed a concrete intelligence report confirming that her husband had been captured alive.

82. The Department of State then issued an official statement confirming that Mr. Bamaca was captured alive, was lightly but not seriously wounded, and was a prisoner for some time, but that no information existed to confirm that he was still alive.

83. Plaintiff returned to Washington, D.C. in November, 1994, and met with the National Security Council Defendants. Defendant Anthony Lake informed Plaintiff that the government had "scraped the bottom of the barrel" for information, and that no further information existed. He also stated that they were still searching for information and would keep Plaintiff informed.

84. On information and belief, however, the National Security Council was in possession of the September, 1993 report issued by the CIA that verified that Mr. Bamaca had been extrajudicially executed while in custody. On information and belief, the National Security Council also had full access to numerous other reports that stated that Mr. Bamaca was in fact long dead. The National Security Council Defendants, however, never informed or advised Plaintiff of the existence of any such reports of her husband's death, nor of the underlying contents thereof.

85. Because Plaintiff suspected that information was still being improperly withheld from her, she filed Freedom of Information Act ("FOIA") requests with the Defendants' respective agencies in January 1995. Although expedited

processing was granted in light of the emergency situation, Plaintiff received no documents of any kind in the following months.

86. From November 1994 through February of 1995, Plaintiff met repeatedly with the State Department and National Security Council Defendants. They repeatedly informed her that no information existed to show that her husband was alive. When she asked point blank if any concrete information existed as to his death, such as a body, witness, grave, credible report, or anything else of any kind, she was told that no such concrete information existed, and that they would assume he was alive for purposes of their investigation.

87. In mid-February 1995, Plaintiff announced publicly, as well as personally to the State Department and National Security Council Defendants, that, due to the failure of the Defendants to inform her of her husband's fate or to assist her in her attempts to save her husband's life or at least determine his fate, she would resume her hunger strike in front of the White House on March 12, 1995, the third anniversary of her husband's capture.

88. All Defendants were fully aware of Plaintiff's hunger strike and that Plaintiff would cease her hunger strike if she were fully apprised of information concerning her husband's death or continued detention.

89. In response, the National Security Council and Department of State Defendants each met with Plaintiff again. They each told her that they were of the opinion (or assessment) that her husband was dead. When Plaintiff pressed for the basis of this opinion or assessment, she was told that a thorough investigation had been carried out, that there was no evidence that her husband remained alive, that many years had now passed, that they did not know what had happened to him, and that they would continue to assume that he was alive for purposes of the investigation.

90. As a result of Defendants' intentionally deceptive statements and omissions, Plaintiff continued to believe that it was possible that her husband remained alive and was suffering terrible torture. This belief caused Plaintiff severe emotional injury, and led her to engage in a third, very dangerous hunger strike that began on March 12, 1995.

91. On the twelfth day of this hunger strike, United States Representative Robert Torricelli publicly announced that the murder of Mr. Bamaca had been ordered in 1992 by Julio Roberto Alpirez, a paid CIA agent and a Colonel in the Guatemalan army.

92. On information and belief, after Mr. Bamaca's extrajudicial execution Defendants intentionally misled Plaintiff, through their deceptive statements and omissions, into believing that concrete information about her husband's fate did not exist because they did not want their role or the role of any of the other Defendants in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. On information and belief, Defendants feared such information could be revealed if they disclosed to Plaintiff or to anyone else that they had information regarding Mr. Bamaca's fate.

D. The Injuries Suffered by Plaintiff Directly Resulted from Defendants' Action and from Long-Standing Policies and Practices of the Defendant Agencies

93. Defendant CIA has a long-standing policy, pattern or practice of extracting information through severe torture that often results in death, and of purchasing information that the CIA knows is being extracted through torture and the threat of extrajudicial execution.

94. Defendant CIA also has a long-standing policy, pattern or practice of failing to consider allegations of human rights abuses when recruiting and maintaining assets.

95. Mr. Bamaca's secret imprisonment, torture and extrajudicial execution was directly caused by these CIA policies, patterns or practices.

96. Because Plaintiff still has in-laws in Guatemala and wishes to someday return to live in Guatemala, she and her family members are at risk of suffering similar harms in the future from these CIA policies, patterns or practices.

97. Defendants the Department of State and the National Security Council have a long-standing policy, pattern or practice of providing false information, through deceptive statements and intentional omissions, as to the fate of anyone injured or killed through the CIA's long-standing policy, pattern or practices related to the extraction of information.

98. As a result of the fraudulent statements and intentional omissions made by the Department of State and the National Security Council Defendants, including but not limited to the failure to inform Plaintiff of the March, 1992 report that her husband might still be alive, Plaintiff was unable to take appropriate actions to save her husband's life. Specifically, Plaintiff was foreclosed from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's true plight through the media.

99. As a further result of the deceptive statements and intentional omissions made to her by the Department of State and National Security Council Defendants, including but not limited to their failure to inform Plaintiff of the numerous and concrete reports that her husband was dead, Plaintiff was prevented from making important decisions related to the conduct of her family life. Specifically, Plaintiff was foreclosed from making appropriate arrangements for her husband's burial and she was foreclosed from making other decisions related to the future conduct of her family life.

100. As a result of the fraudulent statements and intentional omissions made to her by the Department of State

and National Security Council Defendarts, Plaintiff suffered severe physical and emotional distress, and economic injuries.

101. Although she did ultimately receive some information from the Defendant agencies as a result of her FOIA requests, to this day Plaintiff still does not know when, where or how her husband died and she has been unable to retrieve his remains for a proper burial.

102. Some or all of the actions, statements, omissions and policies complained of were directed by U.S. Government agents, officials or employees located in the United States.

Causes of Action

I. Violations of Efrain Bamaca's Rights under the Fifth Amendment of the United States Constitution

A. Claims For Declaratory and Injunctive Relief against Defendant CIA and Each of the Individual CIA Defendants Named in His or Her Official Capacity.

Count 1

103. Plaintiff incorporates by reference the allegations in paragraphs 1 through 102.

104. Defendant CIA maintains a policy, pattern or practice of extracting information through the imprisonment and/or severe torture of individuals who may possess information that the CIA, CIA officials, CIA employees and/or CIA agents may deem valuable that often results in their death.

105. The CIA Defendants adhered to this policy, pattern or practice when they imprisoned, tortured and/or extrajudicially executed Mr. Bamaca.

106. By imprisoning, torturing and/or extrajudicially executing Mr. Bamaca, the CIA Defendants deprived Mr.

Bamaca of his life and his liberty in violation of the substantive and procedural protections of the Due Process Clause of the Fifth Amendment.

Count 2

107. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 106.

108. Defendant CIA maintains a policy, pattern or practice of purchasing information that its officials, employees and/or agents know or should know is being extracted through the secret imprisonment, torture, and threat of extrajudicial execution of individuals who may possess information that the CIA, CIA officials, CIA employees and/or CIA agents may deem valuable.

109. The CIA Defendants adhered to this policy, pattern or practice when they conspired with and/or directed Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and/or extrajudicially executed Mr. Bamaca as part of their effort to obtain information sought by the CIA defendants.

110. The CIA Defendants knew or should have known that Mr. Alpirez and/or others from whom they were seeking to purchase this information would resort to such methods to obtain the information both because the CIA Defendants had trained Mr. Alpirez and/or others to use such methods at the CIA's School of Americas and because the CIA Defendants were aware that such methods were regularly employed by Mr. Alpirez and other members of the Guatemalan military.

111. By conspiring with and/or directing Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and/or extrajudicially executed Mr. Bamaca, the CIA Defendants deprived Mr. Bamaca of his life and his liberty in violation of the substantive and procedural

protections of the Due Process Clause of the Fifth Amendment.

Count 3

112. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 111.

113. Defendant CIA maintains a policy, pattern or practice of extracting information through the imprisonment and/or severe torture of individuals who may possess information that the CIA, CIA officials, CIA employees, and/or CIA agents may deem valuable that often results in their death.

114. Defendant CIA also maintains a policy, pattern or practice of purchasing information that its officials, employees and/or agents know or should know is being extracted through the secret imprisonment, torture, and threat of extrajudicial execution of individuals who may possess information that the CIA, CIA officials, CIA employees and/or CIA agents may deem valuable.

115. Defendant CIA also maintains a policy, pattern or practice of hiring and maintaining agents and assets without due regard for such agents' and assets' commission of human rights abuses.

116. By maintaining such policies, patterns or practices, the CIA Defendants exhibited deliberate and reckless indifference to the life and liberty of individuals with whom they or those whom they employ and/or from whom they purchase information would come into contact, thereby encouraging and causing the detention, torture and extrajudicial execution of Mr. Bamaca, in violation of the substantive and procedural protections of the Due Process Clause of the Fifth Amendment.

B. Bivens Damages Claims Against Each of the CIA Defendants Who is Named in His or Her Individual Capacity.

Count 4

117. Plaintiff incorporates by reference the allegations in paragraphs 1 through 116.

118. Mr. Bamaca has a clearly established right to be free from being denied his life and his liberty in violation of the substantive and procedural protections of the Due Process Clause of the Fifth Amendment by being secretly imprisoned, tortured, and/or extrajudicially executed.

119. By intentionally and secretly imprisoning, torturing and extrajudicially executing Mr. Bamaca, the CIA Defendants deprived Mr. Bamaca of his life and his liberty in violation of the substantive and procedural protections of the Due Process Clause of the Fifth Amendment.

120. The CIA Defendants' acts were intentional, wilful and malicious.

Count 5

121. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 120.

122. Mr. Bamaca has a clearly established right to be free from being denied his life and his liberty in violation of the substantive and procedural protections of the Due Process Clause of the Fifth Amendment by being secretly imprisoned, tortured, and/or extrajudicially executed.

123. By conspiring with and/or directing Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and extrajudicially executed Mr. Bamaca, the CIA Defendants deprived Mr. Bamaca of his life and his liberty in violation of the substantive and procedural

protections of the Due Process Clause of the Fifth Amendment.

124. The CIA Defendants' acts were intentional, wilful and malicious.

II. Violations of Plaintiff's Right to Familial Integrity that is Protected by the First, Fifth and Ninth Amendments of the United States Constitution

A. Claims for Declaratory and Injunctive Relief Against the Agency Defendants and the Individual Defendants in their Official Capacities

Count 6
(Against the CIA Defendants)

125. Plaintiff incorporates by reference the allegations in paragraphs 1 through 124.

126. Defendant CIA maintains a policy, pattern or practice of extracting information through the imprisonment and/or severe torture of individuals who may possess information that the CIA, CIA officials, CIA employees and/or CIA agents may deem valuable that often results in their death.

127. The CIA Defendants adhered to this policy, pattern or practice when they intentionally and secretly imprisoned, tortured and/or extrajudicially executed Mr. Bamaca.

128. By intentionally and secretly imprisoning, torturing and/or extrajudicially executing Mr. Bamaca, the CIA Defendants deprived Plaintiff of her rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, to communicate with, and to make familial decisions related to, her husband, and to attend to his health, well-being and security.

129. This conduct caused Plaintiff extreme emotional, physical, and economic harm.

Count 7
(Against the CIA Defendants)

130. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 129.

131. Defendant CIA maintains a policy, pattern or practice of purchasing information that its officials, employees and/or agents know or should know is being extracted through the secret imprisonment, torture, and threat of extrajudicial execution of individuals who may possess information that the CIA, CIA officials, CIA employees and/or CIA agents may deem valuable.

132. The CIA Defendants adhered to this policy, pattern or practice when they conspired with and/or directed Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and/or extrajudicially executed Mr. Bamaca as part of their effort to obtain information sought by the CIA defendants.

133. The CIA Defendants knew or should have known that Mr. Alpirez and/or others from whom they were seeking to purchase this information would resort to such methods to obtain the information both because the CIA Defendants had trained Mr. Alpirez and/or others to use such methods at the CIA's School of the Americas and because the CIA Defendants were aware that such methods were regularly employed by Mr. Alpirez and other members of the Guatemalan military.

134. By conspiring with and/or directing Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and/or extrajudicially executed Mr. Bamaca, the CIA Defendants deprived Plaintiff of her rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, to communicate

with, and to make familial decisions related to, her husband, and to attend to his health, well-being and security.

135. This conduct caused Plaintiff severe emotional, physical, and economic harm.

Count 8
(Against the Department of State and
National Security Council Defendants)

136. Plaintiff incorporates by reference the allegations in paragraphs 1 through 135.

137. Defendants the Department of State and the National Security Council have a long-standing policy, pattern or practice of providing false information, through fraudulent statements and intentional omissions, as to the fate of anyone injured or killed through the CIA's long-standing policy, pattern or practice related to the extraction of information.

138. The Department of State and National Security Council Defendants adhered to this policy, pattern or practice when they provided Plaintiff with deceptive or false information related to her husband and otherwise concealed whether he was alive when in fact he was alive.

139. By providing such deceptive or false information and by otherwise concealing information related to Mr. Bamaca's true situation, including, but not limited to, the May 1993 report that he was still alive, the Department of State and National Security Council Defendants deprived Plaintiff of her rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, to communicate with, and to make familial decisions related to, her husband, and to attend to his health, well-being and security.

140. This deceptive or false information and concealment prevented Plaintiff from preventing her husband's execution and attaining his release because it foreclosed her from effectively seeking adequate legal redress,

petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

141. This deceptive or false information and concealment also caused Plaintiff extreme emotional, physical and economic harm.

Count 9
(Against the Department of State and
National Security Council Defendants)

142. Plaintiff incorporates by reference the allegations in paragraphs 1 through 141.

143. Defendants the Department of State and the National Security Council have a long-standing policy, pattern or practice of providing false information, through fraudulent statements and intentional omissions, as to the fate of anyone injured or killed through the CIA's long-standing policy, pattern or practices related to the extraction of information.

144. The Department of State and National Security Council Defendants adhered to this policy, pattern or practice when they provided Plaintiff with false information, through fraudulent statements and intentional omissions, related to her husband and otherwise concealed whether he was alive when in fact he was alive.

145. By providing such false information and by otherwise concealing information regarding Mr. Bamaca's true situation, including, but not limited to, the later reports of his death, the Department of State and National Security Council Defendants deprived Plaintiff of her rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, to communicate with, and to make familial decisions related to, her husband, and to attend to his health, well-being and security, and other needs.

146. This false information and concealment prevented Plaintiff from making important decisions related to the conduct of her family life including, but not limited to,

making appropriate arrangements for her husband's burial and making other decisions related to the future conduct of her family life.

147. This false information and concealment also caused Plaintiff extreme emotional, physical and economic harm.

B. Bivens Damages Claims Against the Individual Defendants who are Named in their Individual Capacities.

Count 10
(Against the Individual CIA Defendants)

148. Plaintiff incorporates by reference the allegations in paragraphs 1 through 147.

149. By intentionally and secretly imprisoning, torturing and extrajudicially executing Mr. Bamaca, the CIA Defendants deprived Plaintiff of her clearly established rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, to communicate with, and to make familial decisions related to, her husband, and to attend to his health, well-being and security.

150. The CIA Defendants' acts were intentional, wilful and malicious.

151. This conduct caused Plaintiff severe emotional, physical, and economic harm.

Count 11
(Against the Individual CIA Defendants)

152. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 151.

153. By conspiring with and/or directing Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and extrajudicially executed Mr.

Bamaca, the CIA Defendants deprived Plaintiff of her clearly established rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, and to communicate with, her husband, and to attend to his health, well-being and security.

154. The CIA Defendants' acts were intentional, wilful and malicious.

155. This conduct caused Plaintiff severe emotional, physical, and economic harm.

Count 12
(Against the Individual Department of State and National Security Council Defendants)

156. Plaintiff incorporates by reference the allegations in paragraphs 1 through 155.

157. By providing Plaintiff with false or deceptive information related to her husband and otherwise concealing whether he was alive when he was alive, including, but not limited to, concealment of the 1993 report that he might still be alive, the Department of State and National Security Council Defendants deprived Plaintiff of her clearly established rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, and to communicate with, her husband, and to attend to his health, well-being and security.

158. This false and deceptive information and concealment prevented Plaintiff from preventing her husband's execution and attaining his release because it foreclosed her from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

159. The Department of State and National Security Council Defendants' acts were intentional, wilful and malicious.

160. This false and deceptive information and concealment also caused Plaintiff extreme emotional, physical and economic harm.

Count 13
(Against the Individual Department of State and National Security Council Defendants)

161. Plaintiff incorporates by reference the allegations in paragraphs 1 through 160.

162. By providing Plaintiff with false and deceptive information related to her husband and otherwise concealing whether or not he was alive when he was not alive, including but not limited to numerous later reports of his death, the Department of State and National Security Council Defendants deprived Plaintiff of her clearly established rights protected by the First, Fifth and Ninth Amendments to associate with, to enjoy the company of, and to communicate with, her husband, and to attend to his health, well-being and security, and other needs.

163. This false and deceptive information and concealment prevented Plaintiff from making important decisions related to the conduct of her family life including, but not limited to, making appropriate arrangements for her husband's burial and making other decisions related to the future conduct of her family life.

164. The Department of State and National Security Council Defendants' acts were intentional, wilful and malicious.

165. This false and deceptive information and concealment also caused Plaintiff extreme emotional, physical and economic harm.

III. Violations of Plaintiff's Right to Meaningful Access to the Courts that is Protected by the First and Fifth Amendments of the United States Constitution

A. Claim for Declaratory and Injunctive Relief Against Defendants the Department of State and the National Security Council and each of the individual Department of State and National Security Council Defendants who is Named in his or her Official Capacity.

Count 14

166. Plaintiff incorporates by reference the allegations in paragraphs 1 through 165.

167. Defendants the Department of State and the National Security Council have a long-standing policy, pattern or practice of providing false information, through fraudulent statements and intentional omissions, as to the fate of anyone injured or killed through the CIA's long-standing policy, pattern or practices related to the extraction of information.

168. The Department of State and National Security Council Defendants adhered to this policy, pattern or practice when they provided Plaintiff with false and deceptive information related to her husband and otherwise concealed her husband's true situation.

169. By providing such intentionally deceptive or fraudulent statements and omissions, the Department of State and National Security Council Defendants deprived Plaintiff of her right protected by the First and Fifth Amendments to adequate, effective and meaningful access to the courts.

170. This false or deceptive information and concealment foreclosed Plaintiff from effectively seeking adequate legal redress.

171. The Department of State and National Security Council Defendants intentionally misled Plaintiff in this manner because, while he was still alive, they did not want to threaten their ability to obtain information from Mr. Bamaca through his detention and torture, and because, at all times, they did not want their role or the role of any of the other Defendants in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. The Department of State and National Security Council Defendants feared that, if Plaintiff sought legal redress, these objectives would be undermined.

B. Bivens Damages Claim Against Each of the Individual Department of State and National Security Council Defendants who is Named in his or her Individual Capacity.

Count 15

172. Plaintiff incorporates by reference the allegations in paragraphs 1 through 171.

173. Plaintiff has a clearly established right protected by the First and Fifth Amendments to adequate, effective, and meaningful access to the courts.

174. By providing Plaintiff with false and deceptive information related to her husband and otherwise concealing whether he was alive, the Department of State and National Security Council Defendants deprived Plaintiff of her right protected by the First and Fifth Amendments to adequate, effective, and meaningful access to the courts.

175. This false and deceptive information and concealment foreclosed Plaintiff from effectively seeking adequate legal redress.

176. The Department of State and National Security Council Defendants intentionally misled Plaintiff in this manner because, while he was still alive, they did not want to

threaten their ability to obtain information from Mr. Bamaca through his detention and torture, and because, at all times, they did not want their role or the role of any of the other Defendants in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. The Department of State and National Security Council Defendants feared that, if Plaintiff sought legal redress, these objectives would be undermined.

177. The Department of State and National Security Council Defendants acts were intentional, wilful and malicious.

IV. Violations of Plaintiff's First Amendment Rights of Freedom of Speech and to Petition the Government

A. Claim For Declaratory and Injunctive Relief Against Defendants the Department of State and the National Security Council and each of the individual Department of State and National Security Council Defendants who is Named in his or her Official Capacity.

Count 16

178. Plaintiff incorporates by reference the allegations in paragraph 1 through 177.

179. Defendants the Department of State and the National Security Council have a long-standing policy, pattern or practice of providing false and deceptive information, through fraudulent statements and intentional omissions, as to the fate of anyone injured or killed through the CIA's long-standing policy, pattern or practices related to the extraction of information.

180. The Department of State and National Security Council Defendants adhered to this policy, pattern or practice

when they provided Plaintiff with false and deceptive information related to her husband and otherwise concealed whether he was alive.

181. By providing such false and deceptive information and by otherwise concealing information regarding Mr. Bamaca's true situation, the Department of State and National Security Council Defendants deprived Plaintiff of her rights protected by the First Amendment of the United States Constitution to exercise her freedom of speech and to petition the government.

182. As a result of the fraudulent statements and intentional omissions made to her by the Department of State and National Security Council Defendants, Plaintiff was unable to take appropriate actions to save her husband's life or otherwise to take reasonable steps to respond to his fate. Specifically, Plaintiff was foreclosed from effectively petitioning the appropriate government authorities, and from effectively seeking to publicize her husband's plight through the media.

183. The Department of State and National Security Council Defendants intentionally misled Plaintiff in this manner because, while he was still alive, they did not want to threaten their ability to obtain information from Mr. Bamaca through his detention and torture, and because, at all times, they did not want their role or the role of any of the other Defendants in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. The Department of State and National Security Council Defendants feared that, if Plaintiff petitioned the appropriate government authorities or sought to publicize her husband's plight through the media, these objectives would be undermined.

B. Bivens Damages Claims Against Each of the Individual Department of State and National Security Council Defendants who is Named in his or her Individual Capacity.

Count 17

184. Plaintiff incorporates by reference the allegations in paragraphs 1 through 183.

185. By providing Plaintiff with false and deceptive information related to her husband and otherwise concealing whether he was alive, the Department of State and National Security Council Defendants deprived Plaintiff of her clearly established rights protected by the First and Fifth Amendments to exercise her freedom of speech and to petition the government.

186. As a result of the fraudulent statements and intentional omissions made to her the Department of State and National Security Council Defendants, Plaintiff was unable to take appropriate actions to save her husband's life or otherwise to take reasonable steps to respond to his fate. Specifically, Plaintiff was foreclosed from effectively petitioning the appropriate government authorities, and from effectively seeking to publicize her husband's plight through the media.

187. The Department of State and National Security Council Defendants intentionally misled Plaintiff in this manner because, while he was still alive, they did not want to threaten their ability to obtain information from Mr. Bamaca through his detention and torture, and because, at all times, they did not want their role or the role of any other Defendants in Mr. Bamaca's secret imprisonment, torture and extrajudicial execution to be revealed. The Department of State and National Security Council Defendants feared that, if Plaintiff petitioned the appropriate government authorities or

sought to publicize her husband's plight through the media, these objectives would be undermined.

188. The Department of State and National Security Council Defendants' acts were intentional, wilful and malicious.

V. Tort Claims

A. Additional Factual Allegations In Support of Plaintiff's Tort Claims.

189. Pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2401(b) and 2675, Plaintiff filed notices of claim with the Central Intelligence Agency, the Department of State and the National Security Council on March 9, 1996.

190. This notice raised all of the tort claims asserted herein.

191. Plaintiff received verification that the CIA received the notice of claim on March 14, 1996.

192. Plaintiff received verification that the Department of State received the notice of claim on March 14, 1996.

193. Plaintiff received verification that the National Security Council received the notice of claim on March 15, 1996.

194. The Central Intelligence Agency denied Plaintiff's claims by letter dated September 22, 1996.

195. The Department of State and the National Security Council have failed to respond to the claims filed with them. Pursuant to 28 U.S.C. § 2675(a), Plaintiff hereby elects to deem those claims denied.

B. Tort Claims Against the CIA Defendants.

Count 18
(Intentional Infliction of Emotional Distress)

196. Plaintiff incorporates by reference the allegations in paragraphs 1 through 195.

197. The CIA Defendants' imprisonment, torture, and extrajudicial execution of Mr. Bamaca constituted extreme and outrageous conduct.

198. This extreme and outrageous conduct was engaged in intentionally or recklessly and caused both Mr. Bamaca and Plaintiff to endure severe physical and emotional distress.

Count 19
(Intentional Infliction of Emotional Distress)

199. Plaintiff incorporates by reference the allegations in paragraphs 1 through 198.

200. The CIA Defendants collaborating and/or conspiring with and/or directing Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and extrajudicially executed Mr. Bamaca constituted extreme and outrageous conduct.

201. This extreme and outrageous conduct was engaged in intentionally or recklessly and caused both Mr. Bamaca and Plaintiff to endure severe physical and emotional distress.

Count 20
(Negligent Supervision that Resulted
in the False Imprisonment of Mr. Bamaca)

202. Plaintiff incorporates by reference the allegations in paragraphs 1 through 201.

203. The CIA Defendants hired Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and extrajudicially executed Mr. Bamaca in the course of attempting to obtain the information sought by the CIA.

204. These actions resulted in the false imprisonment of Mr. Bamaca.

205. This false imprisonment of Mr. Bamaca was caused by the CIA Defendants' negligent supervision of Julio Roberto Alpirez and/or others whom they had hired to extract information from Mr. Bamaca.

206. The CIA Defendants should have foreseen that Mr. Bamaca might be subjected to false imprisonment because they knew or should have known that Mr. Alpirez and/or others from whom they were seeking to purchase this information would resort to such methods to obtain the information both because the CIA Defendants had trained Mr. Alpirez and/or others to use such methods at the CIA's School of the Americas and because the CIA Defendants were aware that such methods were regularly employed by Mr. Alpirez and other members of the Guatemalan military.

Count 21
(Negligent Supervision that Resulted
in the Assault and Battery of Mr. Bamaca)

207. Plaintiff incorporates by reference the allegations in paragraph 1 through 206.

208. The CIA Defendants hired Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned,

tortured and extrajudicially executed Mr. Bamaca in the course of attempting to obtain the information sought by the CIA.

209. These acts were intentional and resulted in the assault and battery of Mr. Bamaca.

210. This assault and battery of Mr. Bamaca was caused by the CIA Defendants' negligent supervision of Julio Roberto Alpirez and/or others whom they had hired to extract information from Mr. Bamaca.

211. The CIA Defendants should have foreseen that Mr. Bamaca might be subjected to assault and battery because they knew or should have known that Mr. Alpirez and/or others from whom they were seeking to purchase this information would resort to such methods to obtain the information both because the CIA Defendants had trained Mr. Alpirez and/or others to use such methods at the CIA's School of the Americas and because the CIA Defendants were aware that such methods were regularly employed by Mr. Alpirez and other members of the Guatemalan military.

Count 22
(Negligent Supervision that Resulted
in the Wrongful Death of Mr. Bamaca)

212. Plaintiff incorporates by reference the allegations in paragraphs 1 through 211.

213. The CIA Defendants hired Julio Roberto Alpirez and/or others who intentionally and secretly imprisoned, tortured and extrajudicially executed Mr. Bamaca in the course of attempting to obtain the information sought by the CIA.

214. These acts were intentional and resulted in the wrongful death of Mr. Bamaca.

215. The wrongful death of Mr. Bamaca was caused by the CIA Defendants' negligent supervision of Julio

Roberto Alpirez and/or others whom they had hired to extract information from Mr. Bamaca.

216. The CIA Defendants should have foreseen that the wrongful death of Mr. Bamaca might occur because they knew or should have known that Mr. Alpirez and/or others from whom they were seeking to purchase this information would resort to such methods to obtain the information both because the CIA Defendants had trained Mr. Alpirez and/or others to use such methods at the CIA's School of the Americas and because the CIA Defendants were aware that such methods were regularly employed by Mr. Alpirez and other members of the Guatemalan military.

C. Tort Claims Against the Department of State and the National Security Council Defendants.

Count 23
(Intentional Infliction of Emotional Distress)

217. Plaintiff incorporates by reference the allegations in paragraphs 1 through 216.

218. The Department of State and National Security Council Defendants' intentionally deceptive statements and omissions to Plaintiff about her husband, including concealing whether or not he was alive, constituted extreme and outrageous conduct.

219. This extreme and outrageous conduct was engaged in intentionally or recklessly and caused Plaintiff to endure severe physical harm and emotional distress.

Count 24
(Intentional Misrepresentation)

220. Plaintiff incorporates by reference the allegations in paragraphs 1 through 29.

221. The Department of State and National Security Council Defendants made intentionally deceptive statements and omissions to Plaintiff, and/or negligently supervised others who made such intentionally deceptive statements and omissions to Plaintiff, related to her husband and whether or not he was alive.

222. These deceptive statements and omissions were material to Plaintiff's efforts to re-unite with her husband and foreclosed Plaintiff from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

223. The Department of State and National Security Council Defendants made these intentionally deceptive statements and omissions and/or negligently supervised others who made such intentionally deceptive statements and omissions, to Plaintiff with knowledge of their deceptiveness or falsity and with the intent to deceive Plaintiff.

224. Reliance upon these false and deceptive representations caused damage to the Plaintiff by thwarting her efforts to re-unite with her husband or obtain his remains and by foreclosing her from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

225. Reliance upon these false and deceptive representations also caused Plaintiff to incur extreme physical and emotional distress, and economic injuries.

Count 25
(Negligent Misrepresentation)

226. Plaintiff incorporates by reference the allegations in paragraphs 1 through 225.

227. The Department of State and National Security Council Defendants negligently communicated deceptive or

false statements or omissions, and/or negligently supervised others who intentionally or negligently communicated false and deceptive information, to Plaintiff related to her husband and whether he was alive.

228. This false and deceptive information was material to Plaintiff's efforts to re-unite with her husband and foreclosed Plaintiff from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

229. The Department of State and National Security Council Defendants intended or should have recognized that the Plaintiff would likely be imperiled by action taken in reliance upon this deceptive or false information.

230. Reliance upon this deceptive or false information caused damage to the Plaintiff by thwarting her efforts to re-unite with her husband or obtain his remains and by foreclosing her from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

231. Reliance upon these false and deceptive representations also caused Plaintiff to incur extreme physical and emotional distress, and economic injuries.

Count 26
(Constructive Fraud)

232. Plaintiff incorporates by reference the allegations in paragraphs 1 through 231.

233. The Department of State and National Security Council Defendants innocently or negligently communicated false or deceptive information, and/or negligently supervised others who intentionally, innocently or negligently communicated false or deceptive information to Plaintiff related to her husband and whether he was alive.

234. This false or deceptive information was material to Plaintiff's efforts to re-unite with her husband and foreclosed Plaintiff from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

235. The Department of State and National Security Council Defendants intended for Plaintiff to believe the information conveyed and intended to induce Plaintiff's reliance on that information.

236. Reliance upon this deceptive information caused damage to the Plaintiff by thwarting her efforts to re-unite with her husband or obtain his remains and by foreclosing her from effectively seeking adequate legal redress, petitioning the appropriate government authorities, and seeking to publicize her husband's plight through the media.

237. Reliance upon this false or deceptive information also caused Plaintiff to incur extreme physical and emotional distress, and economic injuries.

Count 27
(Interference with the Right to
Possess a Spouse's Dead Body)

238. Plaintiff incorporates by reference the allegations in paragraph 1 through 237.

239. The Department of State and National Security Council Defendants negligently or intentionally interfered, and continue to negligently or intentionally interfere, with Plaintiff's right to possess and dispose of her spouse's dead body through deceptive or false statements or omissions and/or negligently supervising others who communicated such deceptive or false information, to Plaintiff related to her husband including, but not limited to, the time, date and place of his execution, and the location of his remains.

240. As a result of this interference, plaintiff suffered severe emotional, physical and economic injuries.

VI. International Torts Against Each of the Individual CIA Defendants Named in his or her Individual Capacity

Count 28

241. Plaintiff incorporates by reference the allegations in paragraphs 1 through 240.

242. By participating and/or collaborating in the disappearance, prolonged arbitrary detention, torture, extrajudicial execution, and cruel, inhuman or degrading treatment of Mr. Bamaca, and/or by conspiring or collaborating with and/or directing others who committed such acts, the CIA Defendants violated international law, including the law of war, the law of the United States, and the laws of the District of Columbia, Virginia and Guatemala.

243. As a direct result of Defendants' international law violations, Mr. Bamaca was placed in great fear for his life and suffered severe physical abuse and agony before his death, and Plaintiff suffered extreme emotional and physical distress, as well as the loss of the companionship of her spouse.

244. The CIA Defendants' acts were intentional, wilful and malicious.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

a) For declaratory and injunctive relief as follows:
   (i) a declaration that each of the Defendants' actions complained of herein violate the United States Constitution;
   (ii) an order that Defendants disclose to Plaintiff all known information concerning her husband's death and the location of his body; and
   (iii) an injunction enjoining Defendants from taking such actions in the future.

b) For compensatory damages in the amount proven at trial;

c) For punitive damages;

d) For reasonable attorneys' fees and costs; and

e) For such other and further relief as the Court may deem just and proper.

A jury trial is demanded on all issues.

Respectfully Submitted,

/s/ Ann M. Kapler

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March 30, 1998

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JENNIFER K. HARBURY, on her own behalf and as administratrix of the Estate of Efrain Bamaca-Velasquez,	)	
Plaintiff,	)	
v.	)	C.A. 96-0438 (NHJ)
JOHN M. DEUTCH, Director, Central Intelligence Agency; et. al.	)	
Defendants.	)	

DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT

Defendants, by and through undersigned counsel and pursuant to Fed. Rules Civ. P. 12(b)(1) – (6), respectfully move to dismiss the complaint in this action. As support for their motion, these defendants file herewith a Memorandum of Points and Authorities, which is incorporated by reference. An order consistent with this relief accompanies this motion.

Respectfully Submitted,
/s/ Eric H. Holder, Jr.
ERIC H. HOLDER, JR.,
DC BAR #303115
United States Attorney

/s/ R. Craig Lawrence
R. CRAIG LAWRENCE
DC BAR #171538
Assistant United States Attorney

/s/ Kimberly N. Tarver
KIMBERLY N. TARVER
DC BAR #422869
Assistant United States Attorney

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

December 10, 2001

Mr. Richard Adams Cordray
4900 Grove City Road
Grove City, OH 43123

Re: Warren Christopher, former Secretary of State, et al.
v. Jennifer K. Harbury
No. 01-394

Dear Mr. Cordray:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted.

Sincerely,

/s/ William K. Suter

William K. Suter, Clerk